* **HIGH COURT OF DELHI : NEW DELHI**

Date of decision: August 21, 2007

\+ **W.P. (C) No. 10784-87/2006**

% Directorate of Education ..... Petitioner
Through: Ms. Zubeda Begum, Advocate

versus

Ravindra Kumar Sagar & Others ..... Respondent
Through: Mr. V. Raghav, Advocate.

CORAM:

HON'BLE MR.JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J(ORAL)

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1. The Petitioner, Director of Education and others challenge the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 2886/2005 dated 2nd May 2006 whereby, while holding that there is no infirmity in the order passed by the petitioner herein, direction was issued to consider the case of the Respondent

herein for compassionate appointment by having regard to the DOPT OM dated 5.5.2003.

2. The Respondent No.1 is the younger of the two sons, and Respondent No. 2 is the widow of Late Shri Ram Chander, who died in harness on 18.12.2004 while suffering from paralysis. His family consisted of his widow and two sons, out of which the elder one is living separately. Shri Ram Chander also had daughters, who were married of by him in his life time. The family was granted a sum of Rs.7,65,309/- towards terminal benefits upon the death of Late Shri Ram Chander and the wife of deceased is getting family pension of Rs.4,275/- per month. The family owns a residential house of their own, where they reside. Respondent No. 1 is a married son, and was 33 years of age at the relevant time.

3. Upon the death of late Shri Ram Chander, Respondents applied for compassionate appointment of Respondent No. 1 on 22.3.2005. After making certain inquiries from the Respondents, on 31.7.2005 the Petitioners communicated their decision not to recommend the Respondent's case for compassionate appointment. Thereafter his representation dated 11.10.2005 was also rejected by the Director of Education i.e., Petitioner No.1 herein.

4. Consequently, the Respondents preferred the aforesaid Original application before the Tribunal.

5. The stand of the Petitioner before the Tribunal, as noted by the Tribunal in the impugned order itself, was that, though the Petitioner had considered the application of the Respondent, he was found to be less deserving when compared to the other applicants for seeking compassionate appointment. The Petitioners stated that compassionate appointments were made in cases where the emoluments were even less and dependants were more, and there were liabilities of a minor child.

6. The Tribunal held, and in our view rightly so, that on a comparative evaluation, if any candidate is found to be more deserving, he has a preferential case to be appointed. The Tribunal also notes that the right of compassionate appointment is only a right of consideration and cannot be used to gain indirect entry into Government service. However, by placing reliance on DOPT OM dated 5.5.2003, the Tribunal held that the Respondent no.1 had a continuing right of consideration of his case for compassionate appointment from time to time, for upto three years, in the eventuality of change of circumstances. Based on the aforesaid understanding of the O.M. dated 5.5.2003, the Tribunal gave a direction to the petitioners to consider the case

of the applicant within the time limit prescribed by the said O.M.

7. The petitioners are aggrieved by the interpretation given by the Tribunal to the said OM dated 5.5.2003.

8. The OM dated 5.5.1993 reads as follows:

> "**Time-limit for compassionate appointment. -** The undersigned is directed to refer to Department of Personal and Training O.M. No.14014/6/94-Estt. (D), dated 9.10.1988 and O.M. No. 14014/23/99-Estt. (D) dated 3.12.1999 (Orders (2) and (3) above respectively) on the above subject and to say that the question of prescribing a time limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one-year limit prescribed for grant of compassionate appointment is often resulting in depriving genuine cases seeking compassionate appointments, on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% of Direct Recruitment quota.
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> 2. It has, therefore, been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed Committee may review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year, for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the Committee, a case is considered to be deserving, the name of such a person can be continued for consideration for one more year.

> 3. The minimum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again.
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> 4. The instructions contained in the above mentioned OMs stand modified to the extent mentioned above.
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> 5. The above decision may be brought to the notice of all concerned for information, guidance and necessary action."

9. A reading of the aforesaid OM shows that it is not in every case that the application for compassionate appointment, if not immediately allowed, has to be kept pending and reviewed for a period of three years. It is only in cases where the Committee considering compassionate appointments has reviewed and certified the penurious condition of the applicant at the end of the first and the second year that the application can be kept pending for consideration up to a maximum of 3 years. Moreover, this OM would not apply in situations where the application is not granted on the ground of comparative merit.

This OM would apply only in situations, where even though a highly deserving case exists, the applicant cannot be granted appointment due to non-availability of vacancies. If the interpretation of the Tribunal of the said O.M is taken to be correct, every such application would necessarily have to be kept pending and considered every year for a period of three years. That, in our view is not the purpose of the said OM.

10. It was not the Respondent's case that the Respondent's application was so considered by the Committee to be highly deserving and that it was decided, at the end of the first or the second year to keep the application pending for consideration in subsequent years. In fact, the Respondents were informed on 31.7.2005 that their case was not recommended for compassionate appointment at all. Upon their further representation made on 11.10.2005, the same was turned down by the Petitioner herein on 28.10.2005. The stand of the petitioner was not that there were no vacancies existing to consider case of the Respondent No. 1. The stand was that there were more deserving cases who were granted compassionate appointment. Consequently, the said OM dated 5.5.2003 had no application in the facts of this case.

11. This petition is accordingly allowed. Rule made

absolute. The direction issued by the Tribunal to the Petitioners to consider the case of the Respondent/applicant within the time limit prescribed under OM dated 5.5.2003, i.e., up to a period of 3 years as contained in the impugned order dated 2.5.2006 is quashed and set aside. The O.A. filed by the Respondents is accordingly dismissed.

12. No costs.

VIPIN SANGHI, J.

A.K. SIKRI, J.

August 21, 2007
P.K. BABBAR